

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Caitlin Schwartz	Team: Squad #11	CCRB Case #: 201408507	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/13/2014 5:00 PM	Location of Incident: northbound Bruckner Expressway and East 140th Street	Precinct: 40	18 Mo. SOL 2/13/2016	EO SOL 2/13/2016	
Date/Time CV Reported Thu, 08/14/2014 11:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/19/2014 2:49 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Gregory Zakoscielny	22059	945367	HWY 01
2. An officer			HWY 01

Officer(s)	Allegation	Investigator Recommendation
A.POM Gregory Zakoscielny	Force: PO Gregory Zakoscielny pointed his gun at § 87(2)(b)	
B.POM Gregory Zakoscielny	Discourtesy: PO Gregory Zakoscielny spoke discourteously to § 87(2)(b)	
C. An officer	Abuse: An officer drew his gun.	
D. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b) and § 87(2)(b)	

### Case Summary

On August 13, 2014, at approximately 5pm, § 87(2)(b) who was driving his mother's white 2005 Nissan Maxima with his business partner, § 87(2)(b) in the front passenger's seat, refused to stop at a vehicle checkpoint manned by Highway District Unit Number 1 at the Bruckner Expressway in the Bronx. PO Gregory Zakoscielny of Highway 1 began a vehicle chase with § 87(2)(b) and was eventually able to stop him. PO Zakoscielny pointed his gun at § 87(2)(b) and told him to shut off his vehicle or the officer would have to shoot (**Allegation A**). PO Zakoscielny allegedly asked § 87(2)(b) "Why the fuck are you laughing?" (**Allegation B**). The officer on the passenger's side allegedly knocked his gun on the window, and said, "Open the fucking window (**Allegations C and D**).” PO Zakoscielny subsequently issued § 87(2)(b) six summonses, § 87(2)(b)

§ 87(2)(b)

### Mediation, Civil and Criminal Histories

On September 23, 2014, § 87(2)(b) was offered mediation when he was interviewed at the CCRB. § 87(2)(b) declined mediation § 87(2)(b) On April 24, 2015, a Notice of Claim inquiry made to the New York City Comptroller's Office is pending. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### Civilian and Officer CCRB Histories

- This complaint is § 87(2)(b) and § 87(2)(b) first with the CCRB (encl.4B-C).
- PO Gregory Zakoscielny has been a member of the NYPD for seven years. There is one substantiated allegation against him involving a refusal to provide his name and shield number in case 201305741. The Board recommended instructions, which were imposed by the NYPD (encl. 4A).

### Findings and Recommendations

#### Explanation of Subject Officer Identification

Officer and civilian accounts are consistent that there were numerous officers at the vehicle checkpoint. Given the chaotic scene of having to rush into a police vehicle to chase § 87(2)(b) who had broken through a vehicle checkpoint, PO Zakoscielny was unable to recall which officer was in the vehicle with him at the time he stopped § 87(2)(b) PO Zakoscielny had no assigned partner that day. § 87(2)(b) provided a generic officer description that could apply to numerous officers at the scene and § 87(2)(b) was uncooperative with the investigation. § 87(2)(g)

§ 87(2)(b)

#### Allegations not pleaded

§ 87(2)(b) acknowledged both that he had tinted windows and that he did not comply with stopping as directed at the vehicle checkpoint and did not pull over after being followed by a police vehicle with its turret lights activated. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation A—Force: PO Gregory Zakoscielny pointed his gun at § 87(2)(b)**  
**Allegation C—Abuse of Authority: An officer drew his gun.**  
**Allegation E—Discourtesy: An officer spoke discourteously to § 87(2)(b) and § 87(2)(b)**

It is not in dispute that § 87(2)(b) (encl. 5a-c) refused to comply with directions to pull over at a vehicle checkpoint, that he led a vehicle chase with a police vehicle that had its turret lights and sirens activated, and that he did not pull over until the police vehicle was able to get past him and cut him off. It is also not in dispute that when PO Zakoscielny (encl. 6a-h) approached his car, he had his gun out at chest level, and that after refusing to comply with police directives, including orders to roll down his windows, another officer knocked on the passenger window with a gun and said, “Open the fucking window!”

PO Zakoscielny testified that he drew his gun for his own protection, and held it by his chest as he approached § 87(2)(b) vehicle, and because he could not see both of § 87(2)(b) hands, and because § 87(2)(b) was non-compliant, PO Zakoscielny told § 87(2)(b) to stop escalating the situation, and said something along the lines of, “Don’t make me shoot you.”

Given the inherent dangers involved in vehicle stops, particularly stops that are the result of a chase that ends only when a police vehicle cuts off the escaping vehicle, officers are given broad discretion to draw and point their firearms, *NYPD v. Gliner*, OATH Index No. 955/00 (Sept. 6, 2000) (encl. 1A-T). An officer’s use of an expletive in a verbal command is not considered to be actionable misconduct if it is used to facilitate cooperation rather than as a gratuitous and disrespectful remark. *NYPD v. White*, OATH Index No. 78667/03 (October 7, 2004) (encl. 3A-D).

§ 87(2)(g)  
[REDACTED]

**Allegation B—Discourtesy: PO Gregory Zakoscielny spoke discourteously to § 87(2)(b)**

§ 87(2)(b) alleged that when PO Zakoscielny approached his vehicle, he asked, “Why the fuck are you laughing?” During his CCRB interview, § 87(2)(b) would only provide a vague description of what he was doing and saying while speaking to PO Zakoscielny, and acknowledged that he might have mumbled something under his breath, but would not indicate what he thought it might have been. PO Zakoscielny did not recall whether § 87(2)(b) was laughing at all during their interaction, but denied that he asked him why the “fuck” he was laughing or using any profanity toward him. § 87(2)(b) was uncooperative with this investigation (encl. 7l). § 87(2)(g)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date